



STATE ETHICS COMMISSION BULLETIN

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Goodbye and Hello: Transitioning in and out of Government

A new administration means lots of changes in state and local government as some people leave to pursue other interests in the private sector or at other levels of government and other people begin a new career in the public sector. These transitions may raise issues under the conflict of interest law, which governs the conduct of public officials and, in some cases their partners, even after the employees leave public service.

Entering Government

Chapter 268A of the Massachusetts General Laws requires that government employees give undivided loyalty to the government and act in the public interest rather than for private gain. This law sets a minimum standard of ethical conduct for all state, county and municipal employees and officials.

The law and the Ethics Commission, which enforces the law, were established to foster integrity in government and promote public trust. The purpose of the law is to ensure that public employees' private financial interests and personal relationships do not conflict with their public obligations or, if they must, the conflict is publicly disclosed. The law governs what public employees and officials may do on the job, what they may do after hours or "on the side," and what they may do after they leave public service.

The Commission's website provides educational materials and other information about the restrictions of the conflict of interest law. New state

employees are advised to complete the Commission's online training program.

New local officials and employees may attend an educational seminar conducted by the Commission.

The Commission provides free educational seminars for municipalities, state and county agencies and public groups explaining how the conflict of interest law restricts the conduct of municipal, county and state officials and employees. Some of the topics covered at these informative sessions

include restrictions on receiving gifts,

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outside employment, contracting with the public

employer, acting on matters in which family

members and business associates have a financial interest, leaving municipal, county or state government to work for companies which conduct business with the town, county or commonwealth and avoiding appearances of conflicts of interest.

Leaving Government

The conflict of interest law continues to apply to government employees after they leave public service. In general, §§ 5, 12 and 18 of the conflict law are designed to ensure undivided loyalty from former state, county and municipal employees, respectively.

The law does not prohibit former employees from using general expertise gained while employed by the government. The law is intended,

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David Veator appointed to Commission by Gov. Romney

Governor Mitt Romney appointed Boston attorney David Veator, a Beverly resident, to serve a five year term on the Massachusetts State Ethics Commission.

Veator replaces Commissioner J. Owen Todd, partner at Boston law firm, Todd & Weld LLP.

"Commissioner Todd's wit and wisdom will be sorely missed by the Commission," said Chairman E. George Daher, adding, "Commissioner Veator brings to the Commission an impressive background and a fine reputation and I look forward to working with him."

Veator is an attorney in the litigation department in the Boston office of law firm Greenberg Traurig. From 2003 until 2006, he served as the General Counsel for the Massachusetts Executive Office of Transportation. In this position, he directed all legal strategy for the 1,500-person secretariat and represented Governor Romney in discussions that led to the creation of

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"The Importance of Education"

In the academic world, September is the time to refocus on learning new things as well as reviewing what you already know. In the public sector, that sense of refocusing on learning occurs after the November elections, particularly when the state sees a change in administrations. A new administration not only brings change to government, it also brings new people, many of them working in the public sector for the first time.

The Ethics Commission has always placed a focus on learning. The Commission's website has an abundance of educational materials, advisory opinions and enforcement actions that discuss the application of the conflict of interest and financial disclosure laws. The Commission also offers free educational seminars on a regular basis in the Commission's Boston office and travels throughout the state when asked to present seminars about the services that the Ethics Commission provides and the application of the conflict of interest law to public employees and officials.

Recently the Commission introduced an online training program for state employees on its website. This program, is an effective tool for state agencies to provide all of their employees, new and old, with the basic information they need to know in order to comply with the conflict of interest law.

These educational programs are effective only if government officials take advantage of them. We're looking forward to hearing from you to do just that.

Most importantly, people who are educated about the conflict of interest law know when to get advice from our Legal Division, which provides free, confidential and timely advice to thousands of public employees each year through its attorney of the day program.

Peter Sturges

Commission Members Fall, 2006

E. George Daher, Chair
Tracey Maclin
Matthew N. Kane
Jeanne M. Kempthorne
David L. Veator

Carol Carson
Editor

Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of Disposition Agreements can be found on the Commission's website at www.mass.gov/ethics.

In the Matter of Thomas E. Cislak - The Commission issued a Disposition Agreement in which Ludlow Department of Public Works board member Thomas E. Cislak admitted violating the state's conflict of interest law and agreed to pay a fine of \$5,400, made up of a \$3,000 civil penalty and a \$2,400 civil forfeiture. According to the Disposition Agreement, Cislak violated G.L. c. 268A, § 17(a) by doing paving work requiring a DPW permit. Cislak's average profit for such work was \$400 per project. By receiving compensation from his clients for paving work that required DPW permits, Cislak received compensation in connection with matters in which Ludlow had an interest.

In the Matter of Harry Gannon - Former Maynard Town Accountant Harry Gannon paid a total of \$25,000, a \$5,000 civil penalty and a \$20,000 civil forfeiture, to the Commission for violating section 20 of the state's conflict of interest law by simultaneously serving as the Executive Director of the Maynard Retirement Board. According to the Disposition Agreement, in 1999 Gannon, serving ex officio as town accountant, participated in the Retirement Board's actions to create and fund the executive director position. Gannon was appointed executive director of the Maynard Retirement Board in 2000 at a salary of \$12,000 per year. Gannon, who became Maynard's town accountant in 1985, previously administered the program as part of his duties as town accountant and received an extra \$3,000 annually for the services he provided. Gannon served as both the paid town accountant and the paid retirement board executive director from September 2000 until December 31, 2002 when he retired as town accountant. He continues to serve as executive director of the Retirement Board. Gannon's paid appointment as executive director of the retirement board while he was already serving as the town accountant gave him an ongoing prohibited financial interest in a contract made by the town.

In the Matter of Harry K. Harutunian - The Commission fined Former North Andover Superintendent Harry K. Harutunian \$6,000 for violating the state's conflict of interest law, M.G.L. c. 268A, by improperly creating a part-time custodial job for the son of his girlfriend, directing school custodians to transport the son to and from

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Staff Notes

Victoria Fernandez, a second year law student at New England School of Law is working as an intern as part of an administrative law clinic. She is a native of Dallas, Texas and a graduate of the University of Texas at Austin.

Malden resident **Nubia Villarroel** has joined the Commission as a part-time receptionist. Ms. Villarroel is also a part-time student at Bunker Hill Community College.

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work and covering up his actions to create the job. According to the Disposition Agreement, in fall 2005, a school department employee became Harutunian's girlfriend. Her son attended North Andover High School. Harutunian created a position for his girlfriend's son as a part-time, after-school janitor at the middle school. The position paid \$10.50 per hour; the son earned a total of \$540 during the 2005-2006 school year. Harutunian instructed custodians to pick up the son at the high school, transport him to the middle school to work and drop him at his home after work. In addition, Harutunian instructed a career counselor at the high school to fabricate and backdate a memo requesting that Harutunian find his girlfriend's son a job. By creating the job, directing school department employees to provide transportation and by covering up his involvement in the creation and hiring of his girlfriend's son, Harutunian used his superintendent position to get his girlfriend's son an unwarranted privilege of substantial value in violation of section 23(b)(2).

In the Matter of John Jenkins - The Commission fined retired West Barnstable Fire Department Chief John Jenkins \$2,000 for participating as fire chief in the bid process for a fire truck refurbishment when he was also a sale representative for Pierce Manufacturing, a Wisconsin-based fire equipment company. According to a Disposition Agreement, in 2004 and 2005, Jenkins participated in drawing up the preliminary bid documents to refurbish a 1985 engine-tanker and recommended that the prudential committee accept the low bid. The local representative for Pierce Manufacturing, Minuteman Fire and Rescue Apparatus (Minuteman) of Walpole, Massachusetts, was awarded the contract. Jenkins also acted as fire department liaison with Minuteman throughout the bid and subsequent refurbishment process. Jenkins, who retired from the fire department in March 2005, two months before the refurbished truck was returned to service, did not earn a commission from Minuteman Fire and Rescue Apparatus or Pierce Manufacturing. By participating as fire chief in the bid and refurbishment process while he was also a sales representative for Pierce

Manufacturing, Jenkins violated §23(b)(3). Jenkins could have avoided violating §23(b)(3) by making an advance written disclosure of his relationship with Pierce Manufacturing to his appointing authority, the prudential committee. Jenkins did not make such a disclosure.

In the Matter of William Sullivan - The Commission issued a Disposition Agreement in which former Oak Bluffs Zoning Board of Appeals (ZBA) member William Sullivan admitted violating the state's conflict of interest law by representing clients on six occasions before the ZBA and agreed to pay a civil penalty of \$3,000. Sullivan also agreed to forfeit \$600, the compensation he had received for work done in relation to matters involving the ZBA. According to the Disposition Agreement, Sullivan, a residential designer, violated G.L. c. 268A, § 17(a) and (c) by representing clients for compensation on six special permits before the ZBA. Sullivan's actions included answering questions, presenting his plan designs and advocating the granting of special permits.

In the Matter of Paul Zakrzewski - The Commission issued a Disposition Agreement in which Abington Assessor Paul Zakrzewski admitted violating the state's conflict of interest law, G.L. c. 268A by participating in matters involving his partner, Roger Woods, also of Abington, and paid a civil penalty of \$1,000. According to the Disposition Agreement, Zakrzewski, an elected Assessor, voted to approve four abatement applications filed by Woods. The abatements resulted in first-year tax savings to Woods of over \$5,600. At the time of each of these votes, Zakrzewski and Woods were real estate partners, although they were not partners in the properties that were subjects of the abatement applications and Zakrzewski himself had no interest in any of these applications. By participating in the abatement applications of his partner, Zakrzewski violated section 19.

SECTION BY SECTION THE CONFLICT OF INTEREST LAW, G. L. c. 268A

- Section 17(a) of the conflict of interest law prohibits a municipal employee from receiving compensation from anyone other than the town in relation to particular matters in which the town has an interest.
- Section 17(c) prohibits a municipal employee from acting as an attorney for anyone other than the town in connection with a particular matter in which the town is a party or has a direct and substantial interest.
- Section 19 prohibits a municipal employee from officially participating in matters in which he has a financial interest.
- Section 20 prohibits a municipal employee from having a financial interest in a contract made by the municipality.
- Section 23(b)(2) prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties.

Litigation Update

The Executive Director, and by delegation, the Commission's Legal Division attorneys, have special assistant attorney general status. This status permits Legal Division attorneys to represent the Commission in court proceedings, under the oversight of the Office of the Attorney General.

Jane Doe v. State Ethics Commission

Jane Doe appealed the Superior Court's decision compelling her to testify in a deposition in relation to a matter under investigation by the Commission's Enforcement Division.

The Appeals Court held oral argument on November 13, 2006. Materials in this matter are impounded. This matter remains pending in the Appeals Court.

State Ethics Commission v. Louis A. Mandarin, Jr.

The Commission has commenced a civil action in the Suffolk Superior Court against Louis A. Mandarin, Jr. in order to collect a civil penalty owed by the defendant, Mandarin.

Mandarin, while a member of the Energy Facilities Siting Council, failed to file his Statement of Financial Interest for calendar year 2003 in a timely manner and incurred a civil penalty which he has not paid. After hearing oral argument on November 9, 2006, the Superior Court, (Billings, J.) dismissed Mandarin's counterclaim, stating he failed to exhaust his administrative remedies. The Commission's collection claim remains pending.

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however, to prevent government employees from making official judgments with an eye toward their personal future interests, or from profiting by their participation in particular decisions or controversies after they leave public service. In addition, the law keeps former employees from misusing their past friendships and associations within government to derive an unfair advantage for themselves or others. In certain instances the law also prohibits the business partners of former employees from working on particular matters that the former employee is prohibited from handling.

The revolving door provisions of the law prohibit former government employees from acting as agents or attorneys for, or directly or indirectly receiving compensation from, anyone other than the government that employed them in connection with any particular matter that is of concern to that government and in which they participated as government employees. Thus, if you participated in a matter, you can never become

involved in that same matter after you leave public service for anyone other than the government.

Additional provisions focus on matters over which former government employees could have exercised authority. These sections prohibit former government employees, for one year, from personally appearing before any government agency as an agent, or attorney, for anyone other than the government in connection with a particular matter that concerns the government if the matter was under their official responsibility within two years prior to their termination from public service. This section operates prospectively as a one year ban on former government employees' personal appearances in connection with matters under their authority for the two years prior to their leaving public service.

The law also extends certain of these prohibitions to the partners of former public employees. These sections prohibit a partner of a former government employee, for one year after the employee has left her government position, from knowingly engaging in any activity the former government employee is prohibited from do-

ing under § 5 (a). In other words, if a former government employee is prohibited from engaging in certain activity under § 5 (a), then his partner is similarly prohibited for one year from engaging in the same activity.

Finally, the law prohibits state employees, including former legislators, from acting as legislative agents for anyone other than the state before the governmental body with which the state employees were associated for one year after they leave that body.

Getting Advice

In addition to the website, the online training program and the educational seminars offered by the Commission, the Commission's Legal Division operates an attorney-of-the-day program which provides to public officials free, confidential advice by phone and by letter. Advice provided by the Commission serves as a legal defense in subsequent proceedings concerning the requesting individual's conduct, unless the request omits or misstates material facts.

Please contact the Ethics Commission at (617) 371-9500 for more information.

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the Rose Kennedy Greenway Conservancy. Veator served as Acting Governor Jane Swift's Chief Legal Counsel in 2002 and was the General Counsel for the Massachusetts Office of Consumer Affairs and Business Regulation from 1998 to 2002. From 1988 to 1998, he was an attor-

ney with the Boston law firms of Goodwin Procter and Tucker Goldstein.

A graduate of Dartmouth College and Duke University School of Law, Veator was articles editor for the Duke Law Journal.

The Governor appoints three of the commission members and the Secre-

tary of State and Attorney General each appoint one member. Members serve staggered five-year terms.

Massachusetts state law prohibits more than two members of the commission to be enrolled in the same political party. Veator, an unenrolled voter, replaces Owen Todd, a registered Republican whose term on the commission has expired.